EXHIBIT F

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	. Chapter 11
	. Case No. 24-12480 (JTD)
FRANCHISE GROUP, INC., *et al.*,	.
	. (Jointly Administered)
	.
	. Courtroom No. 5
	. 824 North Market Street
Debtors.	. Wilmington, Delaware 19801
	.
	. Wednesday, December 11, 2024
. . . . .	. 2:00 p.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

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(Proceedings resumed at 2:00 p.m.)

THE COURT: Good afternoon. This is Judge Dorsey. We're on the record in Franchise Group, Inc., Case No. 24-12480.

I will go ahead and turn it over to debtors counsel to run the agenda and see where we are.

MS. SINCLAIR: Thank you, Your Honor. Good afternoon. Debra Sinclair, Willkie Farr & Gallagher, for the record.

Your Honor, when we broke yesterday, we were still considering the approval of the DIP order and we understand that Paul Hastings took yesterday evening to confer with their clients and that we collectively believe that we do have a solution that addresses Your Honor's concerns stated on the record yesterday. So, I will cede the podium to Mr. Fliman to explain to the Court what the proposed solution is.

THE COURT: Okay, thank you.

Mr. Fliman.

MR. FLIMAN: Good afternoon, Your Honor. For record Dan Fliman, Paul Hastings, for the first lien group.

Your Honor, responsive to your comments yesterday we conferred with our group, our group, which consists of acquired lenders of the DIP. Based on those discussions I can report to the Court that the first lien group agrees to the debtors revising their plan to provide that any releases

of the DIP lenders or the first lien lenders will be subject to the investigation conducted by the Holdco debtors independent director that was appointed.

To be clear, Your Honor, the first lien group agrees that making those revisions to the plan will not be an event of default under the DIP or any kind of termination right under the RSA.

THE COURT: Okay, thank you.

MR. FLIMAN: Thank you, Your Honor.

THE COURT: Alright, with that, as I indicated yesterday, I was inclined to and I will enter --

MR. LAURIA: Your Honor, if I may ask one question.

THE COURT: Go ahead.

MR. LAURIA: Is that going to be reflected in an order or somewhere in writing so we don't have to refer to the transcript of this proceeding.

THE COURT: I think Mr. Fliman said they were going to amend the proposed plan to include that.

MR. FLIMAN: Right, Your Honor. The debtors will be revising the proposed plan in an order to reflect that change. Now in the interim my representation, I think, should be sufficient that the DIP lenders are not going to call default with respect to that change that we just consented to under the DIP or the RSA.

THE COURT: Okay, and I will accept that representation on the record and will hold them to it. So, with that I am going to approve the DIP motion. As I indicated yesterday, I believe the debtors have established that they have used their business judgment in determining which DIP was appropriate and that the terms of the DIP were appropriate. I think the size is appropriate given the nature of this case and the need to ensure that the debtors preserve value on a going concern basis as they pursue a sale process. I am not going to substitute my business judgment, if I did at all, in connection with the entry into the DIP by the debtors.

The question about whether to apply the entire fairness issue I thought about that last night. I don’t think that there is a basis to do so. There is no conflict here because it's between the debtors and a third-party lender, not intra-debtor debt. In fact, even if I were to apply the entire fairness standard, I don’t think you can get anymore fair then saying that we're going to loan to the Holdco companies on a no fee, no interest, no amortization basis. You certainly are not going to find any better terms then that out in the market place. So, for those reasons I will approve the order.

Do we need to upload an additional revised form of order?

MS. SINCLAIR: Thank you, Your Honor. I will ask Mr. Lunn to weigh in on that. I don't know that we had further revisions to the order that has already been uploaded.

MR. LUNN: Your Honor, I'm not sure that we do. For the record, Matthew Lunn from Young Conaway. I am not sure that we do but we will coordinate in the back channels here and make sure an appropriate order has been uploaded.

THE COURT: Okay.

MS. SINCLAIR: Thank you, Your Honor. I will also cede the podium to Mr. Lunn who will be doing the presentation on the bidding procedures for the debtors.

THE COURT: Okay, Mr. Lunn.

MR. LAURIA: Will the order include the budget?

MS. SINCLAIR: For the record Deborah Sinclair. We did file the revised budget last night following the hearing as I stated on the record yesterday.

THE COURT: And I have seen it.

MR. LAURIA: So, its going to be attached to the order?

THE COURT: Yes, it will be.

ECRO: Your Honor, can you have this gentleman identify himself, please.

THE COURT: Its Mr. Lauria. Mr. Lauria, can you -- we need to change your name. You just have Franchise Group

listed on your thing. That way our ECRO can make sure who is speaking and when.

MR. LAURIA: Sorry about that, Your Honor. I will look to the people who know how to do that kind of thing and see if they can do it. I certainly don't have the know-how or wherewithal to do that. I will make sure to introduce myself each time I speak.

THE COURT: I think we can actually do it from here once we have your name. So, can you change it to Mr. Lauria's name.

You can go ahead while we're waiting to do that.

MR. LUNN: Thank you, Your Honor. For the record Matthew Lunn from Young Conaway on behalf of the debtors.

I will be handling the bid procedures, which is a carryover from yesterday's hearing. The debtors, through the bid procedures motion, are requesting approval of rules and procedures for the marketing of their assets. The debtors filed revised bid procedures last week which appear at Docket No. 335. There was a slightly updated procedures filed this morning that appears at Docket No. 404 and this was simply to make some clarifications to the footnote regarding what causes of action may or may not be included in the sale.

The revised bid procedures, Your Honor, incorporate enhancements and modifications that have resolved the UCC's issues as well as issues that have been raised by

certain landlords. The debtors were also able to reach yesterday, during the course of yesterday's hearing, additional concessions with other landlords; those particularly represented by Mr. LeHane. Leaving, therefore, the only outstanding objection to the bid procedures was the objection being advanced by the Freedom lenders.

With respect to the modifications or enhancements to the procedures, Your Honor, as the Court would expect, the debtors engaged with the committee, facilitated discussions with the 1L's to modify the procedures. And I am not going to walk Your Honor through to those procedures that have been modified as they have been on file for some time now but I do want to hit the enhancements because I think it's appropriate and I think that was really the crux of the issues yesterday.

With respect to the modifications and enhancements, the overall timeline with respect to the sale process is that it has been extended by a week and a half. Initial indications of interest have been extended by a week to December 23rd. The bid deadline has been extended from December -- excuse me, January 23rd to now February 23rd which is 92 days from the petition date.

If bids are received there will be an auction on February 7th, a sale hearing, if there is no auction, Your Honor, would be set for February 10th or if there is an auction on Februa 13th; all subject to Your Honor's

availability, of course. Adequate assurance information will be emailed within 24 hours of receipt of bids. We also have a one business to send them by mail.

Your Honor heard quite a bit about the designation of minimum bid amounts by each company yesterday. That has been added as well to the procedures so everyone understands the mark that they need to hit to get to an auction. Freedom lenders have been provided with certain consent and consultation rights. Those consultation rights are those that mirror those that have been provided to the UCC as well as to the 1L's and consent rights are with respect to modifications that would, otherwise, impact their consultation rights.

There was clarification with respect to commercial tort claims and Chapter V causes of action that aren't being sold unless they relate to a transferred asset. I am not going to overburden the record, Your Honor, with argument. A lot of this is included in our papers and we will rely on our papers as to why the bid procedures are appropriate and are, in fact, designed to maximize value and, therefore, should be approved.

With that being said, the proposed procedures are typical of the procedures that Your Honor is accustomed to seeing and has approved in dozens of cases. We are not seeking approval of a breakup fee in advance approval of an

expense reimbursement. So, one way you can question why the debtors are proceeding to gain approval or entry of an order establishing these procedures.

It's important from the debtors perspective that the procedures are approved to set ground rules so that all parties are on notice as to what is expected and what is required to result in an open and fair process. And an open and fair process the debtors believe is designed to maximize value for the benefit of all of the debtors stakeholders.

Importantly, this is a process now that is supported not only by the 1L's but also by the committee, the estate's other fiduciary in these cases. The complaints that are being advanced by the Freedom lenders are about repour, about time, and essentially delay. More specifically, about adding time to and delay to a process. Sixty more days from the end of the process that the debtors propose to be precise. They are claiming 60 more days is necessary because the debtors have liquidity to support another 60 days of a sale process.

Necessary because the Freedom lenders believe that the information that the debtors are making available is insufficient. Not more time because potential bidders, purchasers have said that they don’t have sufficient time to formulate a bid, not more time because bidders have claimed that there is a lack of information or questioning the

quality of the information that the debtors are making available.

As I think everyone recognizes, the due diligence process as conducted by bidders is a fluid process with parties asking for diligence and the debtors responding. If Freedom lenders want to play Monday morning quarterback, Your Honor, and poke holes in what the debtors have provided thus far and what is not, otherwise, being provided in SIM, ands they are using that as the basis to argue to Your Honor that the timeline needs to be stretched in addition to liquidity. No one, even the debtors cannot predict what a party would want in terms of diligence or what they would want to do in connection with their own analysis as part of their own diligence.

The Freedom lenders business judgment you ignore what has become the standard 45-to-60-day sale timeline and instead what they are arguing is that you must key that off of what your liquidity provides. In the Freedom lenders view, Your Honor, is that the debtors have 60 more days of liquidity so let's use that time, let's use all of the available funds even though the additional time, as Mr. Grubb has testified to, is not necessary to run a fulsome and fair and open process.

Even though a longer sale timeline, as everyone understands, will result in administrative expense claims,

additional administrative expense claims that have the potential for increasing DIP borrowings which would only put Freedom lenders further away from recovery. It's simply nonsensical to run a process out until the debtors run out of liquidity which is what the Freedom lenders are suggesting that Your Honor do.

Why are they insisting on more time? They are requesting more time and additional time and to delay the overall restructuring of the debtors because that parlays into the Freedom lenders objections to the DIP, as Your Honor heard yesterday, and their motion to terminate exclusivity, appoint a trustee, and relief from the automatic stay that is now scheduled for next Tuesday; however, as the evidence and the testimony from Mr. Grubb demonstrates, additional time is not warranted, necessary or appropriate.

Your Honor heard testimony from Mr. Grubb as to why the sale timeline and process maximizes value. This process is typical of what the debtors are proposing, its typical of the procedures that Your Honor has approved and other Courts in this jurisdiction of multiple 363 sales. The debtors have been marketing since September of this year. They reached out again immediately after the petition date.

This timeline is longer then almost all the timelines, I believe, that Your Honor has seen and approved. In fact, and while Mr. Augustine dodged the questions, even

his rule of thumb, as he testified to, is 75 days from the initial outreach. The debtors process is well beyond that 75-day rule of thumb. As now, as modified, the bids are now due 92 days from the petition date.

Ignoring established sale timeline precedent in Mr. Augustine's rule of thumb the Freedom lenders argue that the timeline now must tie to liquidity, again, even if that liquidity means that you get an extra 60 days if the debtors need to use it. It's simply nonsensical. Why would the debtors run a process until they effectively run out of liquidity. There are numerous parties in the process. The process has been enhanced with modifications and the process now, as modified, is supported by the committee, the other estate fiduciary.

Your Honor, I am only going to hit on the reserve price because that was -- it seemed to be a part of an issue that the Freedom lenders were taking, notwithstanding the view from the debtors and I believe as well from the committee that it's an overall enhancement to the process. They are asking for a release price. I think, as everyone understands, release prices are not very typical. They are not typical because the secured lender does not necessarily want everyone to know exactly what they value the collateral at.

Here, the debtors were able to negotiate and set

minimum bid amounts so that parties actually will know what is necessary to hit the mark to guarantee an auction and, in fact, this is helpful to the estate and the debtors to avoid some random low-ball offer and avoid the debtors wasting time on offers that, otherwise, would not even come near these minimum bids. With that said, Your Honor, even if there is a bid that may not hit that minimum bid the debtors are cognizant of their fiduciary duty and will still entertain these bids if, in fact, overall, it may maximize value.

In conclusion, Your Honor, you are not hearing that a sale process whit established rules and guidelines shouldn't be approved. Really what we have is a difference of an opinion and a difference of view as to what is appropriate as to the length of the sale process. What the debtors determined in the exercise of their business judgment, as is demonstrated by Mr. Grubb's testimony, is that 92 days to a bid deadline from the petition date is enough under the circumstances.

The proposed sale process, as I have said, is much longer then what Your Honor has typically seen and approved. Its longer then Mr. Augustine's rule of thumb and in other words the sale process is anything but expedited. The debtors have to strike a balance of the expediency with the overall time and as the testimony from Mr. Grubb demonstrates the debtors have struck that balance.

There is no discernible reason other than the debtors have potential liquidity to go longer and the Freedom lenders want 60 days but that is simply not value maximizing in the debtors view. The debtors business judgment in setting the timeline should not be substituted for that of the Freedom lenders business judgment, an entity that does not owe any fiduciary duty to these estates.

For these reasons, Your Honor, we would request approval of the procedures as have been modified. I am happy to address any questions Your Honor may have.

THE COURT: Not at this time. Thank you, Mr. Lunn.

Mr. Lauria -- oh, I'm sorry, Mr. Sasson, for the 1L's. I'm sorry.

MR. SASSON: No worries, Your Honor. For the record Isaac Sasson from Paul Hastings on behalf of the ad hoc group of first lien lenders.

Your Honor, this is the second time we are before this Court on a spill-over day for a series of contested motions filed by the debtors. The second time the Freedom lender group junior creditors who to date have not put in one dollar of their own capital at risk will ask this Court to supplant the debtors business judgment for that of their own. The second time the Freedom lender group has tried to blow minor points in a globally negotiated deal out of proportion with the aim of putting these Chapter 11 cases on a path to

nowhere.

Your Honor, so for now, what seems like the umpteenth time in these Chapter 11 cases we stand before you asking to very simply allow the debtors to exercise their fiduciary duties according to their business judgment. The first lien group filed a joinder to the bidding procedures at Docket No. 368. We echo many of the points made by the debtors and Mr. Lunn just now. So, we won't belabor the point here.

We rise to emphasize two points in response to Freedom lender group's objection. First, its unclear but it seems that the Freedom lender group are trying to establish that cause exists to cap the first lien groups credit bid price as part of the auction process. We don’t believe there is any cause here. Second, the sale process timeline, in particular as it has been extended at the request of the debtors and the committee, provides the debtors more than sufficient time for a competitive sale process.

Your Honor, I want to start, if I may, with the minimum bid concept. As Mr. Grubb testified yesterday, the minimum bid prices for each of the debtors business lines, which is an accommodation requested by the debtors of the first lien group, "will encourage competitive informed bidding because the prices will eliminate any doubt that bidders may have as to (I) whether the assets can be sold

separately or (II) whether bidders need to bid on all of their assets or alternatively rely on others to bid on assets for their bid to be actionable." That is at Paragraphs 16 and 21 of Mr. Grubb's declaration.

The testimony of Mr. Augustine, for what it's worth, is not an estate fiduciary and was retained only a few weeks ago is not to the contrary. While Mr. Augustine generally believes that capping the first lien lenders credit bid rights to probe Mr. Augustine will likely or could result in value being maximized, Mr. Augustine separately testified and, again, this is at Paragraph 13 of Mr. Augustine's declaration, it is in the best interest of the estate to inform bidders that (I) these assets can be sold separately and (II) a bidder does not have to bid on all of the assets or rely on others to bid on the remaining assets for their bid to be actionable.

Your Honor, (indiscernible) debtors are doing here as part of the minimum bid prices. Each of the bidders know what they do not have to bid on. They know they don’t have to bid on all the assets, they know where they have to establish their bid to bid on a single asset for their bid to be actionable. So even Mr. Augustine himself agrees that this is a value maximizing sale process.

Your Honor, Mr. Augustine also takes issue with the idea of the minimum bid price altogether, arguing that in

his 35-year experience he has only ever seen minimum bid prices in stalking horse sales and in stalking horse sales they are okay. In this case the Freedom lender group itself, and this is at Paragraph 36 of their objection, argues that the plan toggle and the equitization toggle is akin to a stalking horse bid. So, the first lien groups is, effectively, a stalking horse bid.

In that case, according to Mr. Augustine, the minimum bid price, again, would be typical and customary. For what its worth, setting it at $300 million less than the total debt, so DIP ABL and 1L is $1.4, the minimum bid prices are about $1.1, actually incentivizes further bidding as you don’t have to clear all the debt in order to go to auction.

Just the last piece on minimum bid prices, Mr. Augustine yesterday took the actual prices that were discussed. He simultaneously argued that PSP is set too high and this would discourage any hypothetical bidders who would only bid $850 million but the VSI price, for what its worth, was set too low and would provide a disincentive for bidders to participate because in his view it signals a fire sale.

Putting aside the absurdity of that premise, we have eight separate bidders who would bid exactly below the minimum bid price only to raise their bid at auction but they wouldn’t actually bid the minimum bid price at auction. It's not clear what Mr. Augustine was pushing for. Are lower

prices value maximizing or do they signal a fire sale. Do higher prices incentive bidding or do they insure that eight hypothetical bidders all would be willing to bid exactly what is below the minimum price. As Mr. Lunn mentioned earlier, this process is fluid and Mr. Augustine's goldilocks view on how to run a 363 auction should not be credence by the Court today.

In any event, as Mr. Grubb testified yesterday, the minimum bid prices requested by the debtors and provided by the first lien group as an accommodation provides for a value maximizing proposition and sale process. There is no evidence to the contrary and no evidence to cap the first lien lenders ability to bid above that.

Your Honor, unless you have any questions on minimum bid prices I will move to the timeline.

THE COURT: Okay.

MR. SASSON: On the timeline it’s the same thing. As a request of the committee and the debtors the first lien group has agreed to extend the timeline by approximately a week and a half. The current bid deadline of February 3rd is 92 days after the petition date, 84 days after when the motion was filed, 54 days from today, and 30 days after the end of the holiday season that the first lien group seems so focused on.

Initially, Your Honor, it's unclear whether the

Freedom lender group actually believed that the timeline set forth in this sale process is inadequate. As was apparent from Mr. Augustine's testimony yesterday, Mr. Augustine doesn't necessarily take aim at the timing itself, timing that Mr. Augustine when he's on the debtors' side has testified is sufficient, but takes aim with the information the debtors are including in their CIMs and how much that may affect the timeline. However, much to Mr. Augustine's apparent chagrin, Greenhill is not the debtors' investment banker, and the Freedom lender group cannot supplant the debtors' views as to maximizing value. While Mr. Augustine is not sure, to quote his testimony yesterday, that the market is being canvassed, or while he would prefer four wall EBITDA information to be included in a CIM and not a data room, that does not provide a basis to elongate the process by an additional two months.

And, Your Honor, on this point, Mr. Grubb's testimony in his declaration is informative. Mr. Grubb's point, other than the Freedom lender group itself, who, for what it's worth, had months to put in a bid as part of the prepetition restructuring negotiation, then failed to do so, not one of the potential bidders had indicated any concerns with the proposed milestones embodied in the original bidding procedures, let alone a deadline as agreed set forth in the revised. And, Your Honor, that's in Mr. Grubb's declaration

at paragraph 19.

So the timeline as proposed was meant to ensure a robust, to quote Mr. Grubb, sale process, and give bidders sufficient time to submit a bid for the assets. As amended, the revised timeline gives bidders even more time, and the first lien group admits there's no basis to further lengthen the timeline today.

But, Your Honor, unless you have any further questions, we respectfully ask that for these reasons and the reasons stated by the debtors the Court grant the motion.

THE COURT: Okay, no questions. Thank you.

Mr. Labov for the committee?

MR. LABOV: Thank you, Your Honor. Good afternoon, Paul Labov, Pachulski Stang Ziehl & Jones, on behalf of the committee, Your Honor.

Your Honor, I thought it might be helpful if we just took a step back and give you the committee perspective with respect to the bidding procedures. I won't get too much into what transpired over the last couple of days, but as Your Honor knows, the committee walked into a situation in which there seemed to be, putting it mildly, a great deal of disagreement among the debtors and the 1Ls on the one side and the 2Ls on the other. And so as the committee, you know, that's actually a very privileged position for us because what we'd like to do to come into that position is try to

bring people together and try to make the process work, if at all possible. And if not, that's the nice thing about being the committee because we can evaluate what's already happened and we can see what the strategy is moving forward. And we don't pick favorites and we don't play sides. What we get to do is be thoughtful about the process.

And so what we -- our mission statement here is twofold: Do no harm and improve upon a process, if that's at all possible. And so we had our investment bankers, Perella Weinberg Partners, take a look at the process itself. And we of course at Pachulski have a great deal of experience in this space, we looked at the process ourselves, and we determined that this process was in fact framed out appropriately from the get-go; however, there were further improvements that needed to be made to the process.

And so rather than tear down the structure of what was already there, and the costs and the uncertainty that Your Honor heard so much about yesterday that would entail if in fact the process was moved out or turned upside down, we endeavored to really improve upon it.

And so there were really three areas, I'll get into them briefly. The first was the timeline.

Now, when we looked at the initial timeline and we saw that there was a holiday in the middle of it, Christmas and New Year's, we went immediately to our investment

bankers, who have a great deal of experience, as I said, in this area, and we said, what looks good here? And they told us, look, if we could get one to two weeks and get past the holidays, the people that are bidding on these assets, the entities, they're very sophisticated, they know what these assets look like; that would be wonderful. And that's exactly what we did, we went out, we asked for two weeks, we got a week and a half, and we were very comfortable with that.

There was another area that really kind of caused us some consternation and that was the messaging. If Your Honor goes back and look, we will show that we were able to disaggregate the bid. So, initially, when you looked at these bidding procedures, it looked like you have to come to the party with a $1.6 billion bid. Now, that's actually not the case. If you dug deep enough, you would find that in fact you could disaggregate the bid. We moved all of that information into the bidding procedures themselves, so that if anybody looked they would be able to understand that they didn't need to come to the party with a $1.6 billion bid. They could bid on individual business segments.

In addition to that messaging, Your Honor, there's actually a substantive piece, and you've heard all about it with the reserved pricing or the minimum bid pricing.

Just so Your Honor is very clear on this, those

are not numbers that were pulled out of thin air; those are numbers that were vetted by, at least on our side, our investment bankers. Those were numbers that were designed to actually encourage bidding and increase bidding. And you did hear yesterday Mr. Augustine's testimony that one was too high and one was too low, and certainly I can appreciate that and we can appreciate his opinion on that, but our investment banker said, no, these numbers are actually where we think increased bidding will be encouraged. So that's the second area.

The third area that we think needed improvement -- and we think, again, it was a bit of a struggle, but we got there -- was that we were able to carve out commercial tort claims and avoidance actions, and those are -- those will be left behind with the estate, we'll be dealing with those later, but we think that doing so will absolutely inure to the benefit of all the debtors' stakeholders.

So those were the three areas. I will say that it was not a walk in the park, but we had an open ear with Willkie, we had an open ear with the 1Ls' counsel. And even until late last evening, Your Honor, we were negotiating final points on this.

And so we think, after all that, I actually want to thank Ms. Graber and Sinclair, Ms. Feldman, and then of course Mr. Sasson and his team, because we actually got to

where we believe, as the committee, we have a really good set of bidding procedures that will encourage bidding and eventually maximize value.

I'm happy to answer any questions, Your Honor.

THE COURT: No questions. Thank you.

Anyone else in support of the motion?

(No verbal response)

THE COURT: Okay. Mr. Lauria.

MR. LAURIA: Good afternoon, Your Honor. Can you hear me okay?

THE COURT: I can. Thank you.

MR. LAURIA: My name is Thomas Lauria, I'm with White & Case, we represent the Freedom Holdco Lender Group.

I guess I want to start out just by observing a couple of things about the commentary that was made by some of the supporters of the bid procedures. I guess I've been characterized as a Monday morning quarterback here. In my understanding of that phrase, it refers to someone who criticizes something after the fact, and my understanding is that the bid procedures are still alive and before the Court for consideration. So I don't know how I could be a Monday morning quarterback.

With respect to the comments of the committee, I think it's interesting -- two things I'd like to quickly make. Number one, the committee has portrayed itself as a

peacemaker here. I can tell you as a matter of fact that I have not been contacted by any representative of the committee by email, text, or phone call since the committee came into place. So if they're working to make peace, they're certainly not doing it through contact with me.

Secondly, Counsel made a number of references to the views of the committee's FA. I'll just note for the record that the committee's FA did not testify. So any representations regarding what the committee's FA thinks are outside the record and are, if nothing else, hearsay -- not even hearsay because it's not being offered by a witness, it's just a lawyer talking.

So let's turn to the standard first of all. I think, as this Court knows, courts in Delaware have held that bid procedures should provide benefit to the estate by maximizing the value of the assets. I can cite to Dura, there are other cases that have held similarly. As such, the Court in connection with assessing bid procedures is not required to defer to the business judgment. This is not a business judgment rule determination. The Court is completely free to do what it believes will achieve the important objective of maximizing value based on the evidence and the record provided to it.

Here, interestingly, I think everybody has acknowledged that the procedures were largely dictated by the

first lien lenders who, rather than seeking to maximize value, may in fact just want to own the assets themselves. And so bidding procedures designed by the first lien lenders may not necessarily advance the objective of maximizing the value of the assets.

So I think we've got three points that we really want to address and ask the Court to consider. Number one is whether or not the timeline should be extended. Mr. Augustine testified that the bid deadline should be approximately 90 days from the date when bidders receive complete information. Here, he felt that that information should include Q4 results, it should include benefits that can be obtained from the Chapter 11 process, and it should include four wall financial information for the stores.

I note this because I believe Mr. Augustine was by far the most credible witness on this, and maybe the only witness that could be qualified as an expert on the topic. He testified that he had conducted or participated in a total of 26 363 sales, 19 on the debtor's side and seven involving retail, and seven additional transactions, two of which involved retail. In comparison, Mr. Grubb clearly established by his testimony he had insufficient experience with running 363 sales, much less in the retail space, to be considered an expert.

So I think that you have quite compelling

testimony from Neil Augustine that -- a couple of things: that we really should have a 90-day process for the bidders to get good information, that it's disadvantageous to launch a process during the holiday season, and that he would think that you would look for IOIs at the end of January and have bids at the end of March.

To be clear, Mr. Augustine didn't suggest, and nor do I today, that we should just extend the bid process out because that's what the debtors' liquidity will accommodate. The process needs to be set in a rational way that furthers the objective of maximizing the value of the assets. Now, it is noteworthy that Mr. Orlofsky testified that, based on the current 13-week cash flow of the debtor, there would be no liquidity issues from extending the bid process.

Now, whether the Court thinks that the best thing to do is to adopt Mr. Augustine's view, which contemplates a March 28th bid deadline, or some other date, I think it's fair to say that we have no credible testimony that longer isn't better. And, indeed, Mr. Augustine specifically testified that longer is better. So whether or not we get out to the end of March or some further date, whatever amount of time we could get this deadline kicked out is going to help make our process better. I don't think there's any evidence in the record to contest that.

Point number two. With respect to the minimum

bids, again, Mr. Augustine testified that he thought that putting in minimum bids would do nothing but chill the bidding process and that minimum bids are not the equivalent of a stalking horse bid because, unlike a stalking horse bid, which is actionable if the bid is not topped, these minimum bids are not actionable, they're just numbers and there's no reason to drive potential bidders away by setting a number. Let the market speak, let the market speak freely. The debtor is under no obligation to accept any bid that it doesn't think is fair or value-maximizing. And any bid that the debtor does bring forward is going to be subject to a topping bid, either a credit bid by the 1L lenders -- they have, I think, until six hours before the commencement of an auction to submit a credit bid -- so if any bid that is brought forward that's a qualified bid is too low, the 1Ls have their right to come in and top the credit bid, and they have a significant amount of debt that they can use for that purpose.

I think that what Mr. Augustine testified is that more bidders is better because it creates competitive tension. Competition is what results in bidders increasing their bids. So, if we can increase competition, we're more likely to get a higher price. So we think that, as supported by Mr. Augustine's testimony, the minimum bids should be removed.

The final thing that I'd like to raise is really two points of clarification that, as I read through the bidding procedures, I can't quite understand. Number one, I think it should be clear that if the 1Ls' credit bid, they cannot credit bid in the aggregate more than they're owed. They can only credit bid, whether it's against one entity or across all three, the aggregate credit bid cannot exceed the amount that they're owed. I'm not suggesting there should be a cap other than the amount that they're owed. I would be surprised and disappointed if the 1L lenders believe that they should somehow be able to credit bid more than the amount of their debt.

The second clarification that I'd ask for, Your Honor, is that if the 1Ls credit bid, once they credit bid up to the full amount that they're owed, they don't get to keep or receive other assets of the debtors. They make their credit bid, it gets up to the full amount they're owed, that's it. That's their debt, it's now being satisfied with the assets that they get with their credit bid, or cash, if their credit bid gets topped, in which case there's more cash coming into the estates than they're owed, but in any event their recovery should be limited to the amount they're owed in either case.

Your Honor, with those, hopefully some consideration of the timeline, some consideration on whether

or not the minimum bids are helpful, and with those clarifications, we would be content to have the bidding procedures approved.

THE COURT: Okay. Thank you, Mr. Lauria.

Mr. Lunn, any response?

MR. LUNN: Just very briefly, Your Honor. Again, we heard about the information and the lack of information, and a Monday morning quarterback is someone looking at what's already out there and saying, ah, that's not right, that's not enough, and that's exactly what's happening. They're saying that the information that's in or that is not in is information that should be forthcoming. The debtors will update due diligence, they'll update the data room as and when this information comes, that is the process, that is what always happens.

With respect to -- and also with respect to the process and the timeline, Your Honor hasn't heard anyone saying and there hasn't been any testimony to say that people are upset with what is happening now in terms of the timeline or the information that's there. In fact, it's the opposite. You have the estate fiduciary, the committee standing up and saying we support this timeline, we believe it's fair, it will maximize value for everybody, and the debtors agree that the timeline that the debtors have proposed, now as modified, will result in a robust and fulsome process that is designed

to maximize value.

Your Honor again heard, you know, sometimes, hey, let's have more time. And I'm going to quote Judge Sontchi, I can't remember the case, he once said that Chapter 11 cases are not like a fine wine, they don't get better with age. We should not be extending the process to simply extend the process because we have more liquidity or we don't. It's important to adhere to this timeline that we're talking about here, again, supported by the other estate fiduciaries, Your Honor.

And now I heard that the minimum bids requirement, or at least that enhancement, should now be removed because it somehow discourages the competitiveness, and I just -- I don't -- I'm sorry, I just don't follow that. These parties will now know with the minimum bid what is necessary to hit the mark to get to an auction. That, from the debtors' perspective, is an enhancement as it alerts parties to know that, again, all of these different segments can be bought, can be purchased on an individualized basis as well. This is an enhancement; removing that, from the debtors' perspective, would go backwards, Your Honor.

Unless Your Honor has any other questions, we would again request approval of the bid procedures as modified.

THE COURT: Okay. Thank you.

Mr. Sasson.

MR. SASSON: Your Honor, for the record, Isaac Sasson from Paul Hastings. Unless you have any questions, we don't have anything to add.

THE COURT: Okay. Thank you.

Mr. Labov?

MR. LABOV: Thank you, Your Honor. Nothing to add from the committee's perspective.

THE COURT: Okay. Thank you. All right.

Obviously, parties can always disagree over bidding procedures and what's appropriate and what's not appropriate. I haven't heard anything that leads me to conclude that the debtors' determination that the process needs to be carried out within the time that they provided for -- and they've been successful in getting the 1L debtors -- or, yeah, 1L lenders to extend that timeline, along with the committee. Mr. Augustine's testimony, while he says he would choose a different path, doesn't convince me that what the debtors have proposed is somehow flawed, or that it would not result in a maximization of value here for the debtors.

The timeline I think is appropriate, it's certainly within the realm of what I have approved, and other judges in this district and around the country have approved, in connection with a sale process. And, therefore, I don't think it's necessary to extend that timeline any further than

what it already has been extended.

The fact that there's a holiday, we're talking about a big company with a lot of interests and sophisticated parties who are going to be bidding on this. You know, they know how to work through the holidays and they do it on a regular basis. I've never seen any case where because there was a holiday there was some concern that the bids weren't going to come in the way that they should.

On the minimum bid issue, again, Mr. Augustine takes a view that it will chill bidding. The debtors say it won't chill bidding; in fact it will improve the bidding process. I haven't heard anything that would convince me that having the minimum bid somehow will chill that, I think, other than Mr. Augustine's opinion that it will, but there's nothing -- no concrete evidence was presented to me that in the past where there's been minimum bids -- we see it all the time in stalking horse cases, there's always a minimum bid in a stalking horse case. And here, clearly the 1L lenders, everybody knows what they're owed, and they know that they can credit bid and they can credit bid up to the amount of their debt.

So putting in a minimum bid I think will actually increase the bidding process and go a long way to maximizing value.

The same holds true for the -- that the 1Ls can't

credit bid more than their debt. That's a given. I mean, you can't credit bid more than what you're owed, that's just the way it is. So they can't credit bid, I don't think there's anything -- I don't think we need to put anything in the bid procedures that says that, that's a foregone conclusion. So I don't think there's any need to modify the bid procedures on that issue either.

So, for those reasons, I will approve the bidding procedures. Do we have a final uploaded order? Mr. Lunn, you mentioned there was some small changes that were made earlier.

MR. LUNN: Yeah, there were, Your Honor. Again, for the record, Matthew Lunn. I do believe that we would need hearing dates and times for February 10th and the 14th to plug into the order, and then otherwise I think we can upload the order as it has been filed recently.

THE COURT: Okay. Once it's uploaded, we'll get that order entered.

MR. LUNN: Okay, great. Thank you, Your Honor.

THE COURT: All right. Anything else for today?

MR. LUNN: Not from the debtors' perspective, Your Honor.

THE COURT: Okay. So we are on for -- let me try to get the date right -- the 19th, is that when we're getting back together again? No.

COUNSEL: The 17th, Your Honor.

THE COURT: The 17th, 17th, yes. All right, I do have -- just so you know, I've got three other hearings that day. I've scheduled this for 11:00, I've got a 10 o'clock; I've got a 2 o'clock and a 3 o'clock. Hopefully, those afternoon ones might go away, so if we do need to go further -- although we did close the record, so there should be no additional evidence, we're just talking about oral argument, so I don't anticipate it will take too much time on the calendar.

So, with that, I will see everybody on the 17th.

COUNSEL: Thank you, Your Honor.

THE COURT: Thank you all. We're adjourned.

(Proceedings concluded at 2:49 p.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling December 12, 2024

William J. Garling, CET-543

Certified Court Transcriptionist

For Reliable

/s/ Tracey J. Williams December 12, 2024

Tracey J. Williams, CET-914

Certified Court Transcriptionist

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